ORAL ARGUMENT NOT YET SCHEDULED

Case No. 14-1185

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Laura Sands,

Petitioner,

v.

National Labor Relations Board,

Respondent.

On Petition for Review of a Decision and Order of the National Labor Relations Board

BRIEF OF PETITIONER

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February 11, 2015

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Petitioner Laura Sands certifies the following:

(A) ***Parties and Amici***:

(1) The National Labor Relations Board ("NLRB" or "Board") is the Respondent in the case before this Court;

(2) Laura Sands was the Charging Party before the Board, and the Petitioner in this Court;

(3) United Food & Commercial Workers, Local 700 was the Respondent in the Board proceedings, and is the Intervenor before this Court.

(B) ***Rulings Under Review***: This case is before the Court on petition for review of the Board's Decision and Order in *United Food & Commercial Workers International Union, Local 700 (Kroger Limited Partnership)*, Case No. 25-CB-008896, reported at 361 NLRB No. 39 (Sept. 10, 2014).

(C) ***Related Cases***: The instant case was not previously before this or any other court. There are no related cases. However, this case was previously the subject of a petition for mandamus before this Court in *In re Laura Sands*, No. 14-007, after the Board failed to decide this case for more than six years. The Board only decided this case after this Court set an oral argument date to hear the mandamus petition.

Respectfully submitted,

/s/Aaron B. Solem

Aaron B. Solem

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GLOSSARY OF ABBREVIATIONS

Administrative Law Judge	("ALJ")
National Labor Relations Act	("NLRA" or "Act")
National Labor Relations Board	("NLRB" or "Board")
Unfair labor practice	("ULP")
United Food & Commercial Workers	("UFCW" or "Union")

APPELLATE JURISDICTION

This Court has appellate jurisdiction over this case pursuant to Section 10(f) of the National Labor Relations Act ("NLRA" or "Act"), 29 U.S.C. § 160(f). On September 10, 2014, the National Labor Relations Board ("NLRB" or "Board") issued a final and judicially reviewable decision dismissing Petitioner Laura Sands' unfair labor practice charge, which is reported at 361 NLRB No. 39. (JA 79).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

(1) Whether the National Labor Relations Board erred in again insisting the United Food & Commercial Workers, Local 700 ("UFCW" or "Union") was not required to provide Ms. Sands and other newly hired Kroger employees, when it first sought to compel them to join the union or pay full dues, the amount of the dues reduction they would receive if they chose to object to "full" dues, as mandated by *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).

(2) Whether the National Labor Relations Board further erred in refusing to adhere to this Court's binding precedents in *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000) and *Abrams v. Communications Workers of America*, 59 F.3d 1373 (D.C. Cir. 1995), that require unions to provide the dues reduction percentage before employees can be required to pay dues or fees.

STATEMENT OF THE CASE

This Court has ruled multiple times that a union's initial notice to new employees and potential objectors, required under *Beck*, 487 U.S. 735, must include the chargeable versus nonchargeable calculation of what employees will pay if they choose to become *Beck* objectors. *See Abrams*, 59 F.3d at 1379; *Penrod*, 203 F.3d at 47-48. The main issue in this case is whether the NLRB is free to disregard this Court's longstanding decisions and statutory analysis.

On June 30, 2005, Laura Sands filed an unfair labor practice ("ULP") charge alleging the UFCW failed to provide her and other newly hired employees, at the time they were hired, with adequate information and financial disclosure about their rights and options under the contractual "union security" clause.

On March 7, 2008, an Administrative Law Judge ("ALJ") ruled that the UFCW did not violate the Act, even though its initial *Beck* notice was entirely silent on the subject of the Union's chargeable versus nonchargeable calculation or the reduced fee amount a *Beck* objector could pay. In April 2008, Sands and the NLRB's General Counsel filed exceptions. For over six years the case languished at the NLRB without a decision. Only after Sands filed a writ of mandamus in this Court, and oral argument was scheduled on the writ, did the Board issue a decision. *See In re Laura Sands*, No. 14-007.

On September 10, 2014, by a 3-2 decision, the Board affirmed the ALJ and dismissed Sands' ULP charge. Directly disagreeing with this Court's consistent line of compelled fees cases, it found that the Supreme Court's decision in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), is not controlling, and that requiring unions to produce chargeable versus nonchargeable reduced fee information in an initial notice would be "burdensome." Sands filed a Petition for Review in this Court on September 23, 2014.

STATEMENT OF THE FACTS

This case was decided on a stipulated record before the ALJ and Board. The UFCW entered into a collective bargaining agreement with Kroger that requires all employees, as a condition of employment, to join or pay fees to the UFCW. (JA 11). Sometime in December 2004, Sands, then a 17-year old, became employed at a Kroger grocery store in Crawfordsville, Indiana. (JA 48). Shortly after her hire, the UFCW sent Sands two letters, each containing a membership form and dues deduction card. (JA 15-21). Neither cover letter contained any explicit mention of the right to choose non-membership or pay a reduced fee. (JA 15, 19). The second letter, dated January 25, 2005, appears to paint full membership as the only viable option to avoid termination by Kroger:

> Your financial obligation is a condition of employment and is explained on the enclosed documents. This requirement is pursuant to the Collective Bargaining Agreement between U.F.C.W. Local 700 and your employer and applicable law. Currently, full regular monthly dues and fees based on your hire date of December 10, 2004 are set forth below.
>
> | | |
> |---|---|
> | Dues for February 2005 at $25.39 per month | $25.39 |
> | Initiation fees | $66.00 |
> | Total | $91.39 |
>
> Please pay the amounts you owe by February 1, 2005 OR you may fill out, sign and return the enclosed application and dues deduction form with in [sic] seven (7) days of receipt of this letter. Filling out, signing and returning these forms will facilitate you in satisfying your financial obligations and thereby, avoid any current or future arrearage that may jeopardize your employment.
>
> *If your financial obligation is not met by the above stated date, we are required to ask your employer to terminate your employment. We certainly do not wish to take this action so please act immediately.*

(JA 19) (emphasis added in last paragraph). Only on the front page of the membership application, in minuscule text, does it read: "I am also aware that I may legally refrain from being a member of this UFCW Local Union and forego all rights and benefits of membership as reflected on the reverse side." (JA 20). On the reverse side of the membership application, again in very small text, is the UFCW's *Beck* notice stating:

> If you choose to be an objector, your financial obligation will be reduced very slightly. Individuals who choose to file such objections should advise the Union in writing at its business address of this choice. The Union will then advise you of the amounts which you must pay and how these amounts are calculated, as well as any procedures we have for challenging our computations.

(JA 21). The same notice attempts to dissuade employees from opting for non-membership:

> Please be advised that non-member status constitutes a full waiver of the rights and benefits of UFCW membership. More specifically, this means that you would not be allowed to vote on contract modifications or new contracts; would be ineligible to hold union office or participate in union election and all other rights, privileges, and benefits established for and provided to active UFCW members . . . .

Id.

Sands initially joined the UFCW, but after learning the full scope of her legal rights from sources outside of the Union, she sent the Union a letter resigning her membership and objecting to the payment of full union dues. (JA 22). Sands' letter stated: "I never wanted to join [the Union] in the first place" and "I only joined because I was led to believe that I had to as a condition of my employment . . . I was deliberately misled by union officials regarding my rights to remain a nonmember and to receive a reduction in any payment I would have to make pursuant to a 'union security' clause." *Id*. Only one day after receiving Sands' objection letter, the UFCW provided her with the breakdown of its chargeable and non-chargeable expenditures, including the percentage reduction that objectors are legally allowed to pay to satisfy their "union security" obligations. (JA 23).

Believing she had been misled by the UFCW's incomplete notice, Sands filed the ULP charge initiating this case on June 30, 2005.

STANDING

Sands is a "person aggrieved" under 29 U.S.C. § 160(f). She was the Charging Party below and was denied the relief she sought by the Board's dismissal order. *See Oil, Chem. & Atomic Workers Local Union No. 6-418 v. NLRB*, 694 F.2d 1289, 1294 (D.C. Cir. 1982).

Since the filing of this review petition, the UFCW has attempted to unilaterally moot this case. On November 26, 2014, the UFCW sent a check to Sands in the amount of $350.00. Included with the check was a cover letter from the UFCW's attorney claiming that the funds represented the total amount of dues Sands had paid to the Union, plus interest, and stating: "Given that Ms. Sands left employment at Kroger in June 2005 and that Indiana Code § 22-6-6-8 prevents the application of union security clauses at Ms. Sands' former place of employment, neither party has any continuing interest in the resolution of the legal issue presented by this case."

The UFCW's 11th hour attempt to foreclose review is ham-fisted, and reminiscent of another union's recent attempt to moot a case at the Supreme Court after a writ of certiorari was granted. *Knox v. Serv. Emps. Int'l Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012). There, the Court noted that "postcertiorari maneuvers designed to insulate a decision from review by this Court must be viewed with a critical eye." *Id*. The Court recognized that "voluntary cessation of

challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Id*. Here, this Court already has held that the UFCW's action—refusing to disclose its finances properly—is illegal. *See Penrod*, 203 F.3d at 47-48. Given the UFCW is still defending the legality of its improper notice, "it is not clear why the union would necessarily refrain from" taking similar illegal action "in the future." *Knox*, 132 S. Ct. at 2287.

Moreover, the UFCW's actions are revealed as pure gamesmanship by the fact that it waited for over six years, through the Board's inordinate delay and Ms. Sands' mandamus filing, before it offered to refund the dues money to her. The UFCW could have made that offer at any time, but instead waited for six years to see how its roll of the dice would fall before trying to "settle up with her" to moot the case. But despite the UFCW's scheme, this case remains a live "case and controversy."

First, Sands has the right to NLRB notice posting remedies if her petition for review is granted. "The statute clearly calls for the posting of notices as part of the enforcement procedure of the NLRB," which serves the purpose of "advising the employees that the NLRB has protected their rights, and preventing or deterring future violations." *NLRB v*. *Hiney Printing Co*., 733 F.2d 1170, 1171 (6th Cir.

1984) (per curium); *accord NLRB v. Falk Corp.*, 308 U.S. 453, 462 (1940) (free exercise of employee rights under NLRA enhanced by requiring notice postings).

This Court and other federal circuit courts have consistently held that a petition for review is not moot when a remedial posting remains outstanding, even assuming, *arguendo*, that some portions of the underlying dispute are resolved. *American Fed'n of Gov't Emps., Local 3090 v. FLRA*, 777 F.2d 751, 753 n.13 (D.C. Cir. 1985) ("*AFGE*"); *NLRB v. Methodist Hosp. of Gary, Inc.*, 733 F.2d 43, 48 (7th Cir. 1984); *cf. NLRB v. Metalab-Labcraft*, 367 F.2d 471, 473 (4th Cir. 1966). As this Court explained when it found a union's appeal of an unfavorable Labor Board decision to be a live controversy despite the dispute's resolution:

> An order requiring the [respondent employer] to post such a notice would of course afford petitioner an as yet unrealized remedy for the alleged unfair labor practice. The existence of this additional remedy, and this court's concomitant ability to afford petitioner relief beyond that already obtained, establishes that a live controversy still exists between the parties and that this case is therefore not moot.

AFGE, 777 F.2d at 753 n.13; *see also Association of Admin. Law Judges v. FLRA*, 397 F.3d 957, 960 n.1 (D.C. Cir. 2005) (similar); *Methodist Hosp.*, 733 F.2d at 48 (case not moot because "requiring an employer to post a notice will carry significant impact in informing employees of their rights and effectuating the polities of the Act") (citation omitted); *cf. Knox*, 132 S. Ct. at 2287 ("A case becomes moot only when it is impossible for a court to grant '"'"any effectual relief whatever" to the prevailing party'" . . . . "[a]s long as the parties have a concrete

interest, however small, in the outcome of the litigation, the case is not moot.") (internal citations omitted). Leaving a job does not moot a ULP case, *see Department of Justice v. FLRA*, 991 F.3d 285, 289 (5th Cir. 1993), and this Court has even held the death of an employee does not moot a ULP case. *AFGE, Local 1941 v. FLRA*, 837 F.2d 495, 497 n.2 (D.C. Cir. 1988).[1]

Here, the fact Sands no longer works for Kroger and has been refunded dues does not impair the UFCW's ability to post remedial notices at its offices, the Kroger store where Sands was employed, and any other locations ordered by the NLRB, should Sands prevail here. Indeed, even a union's cessation of all dues collections does not excuse compliance with this notice posting remedy. *See NLRB v. Elec. Steam Radiator Corp.*, 321 F.2d 733, 738 (6th Cir. 1963) (Board remedial order against employer not mooted by cessation of business operation); *NLRB v. Colten*, 105 F.2d 179, 183 (6th Cir. 1939) (it is the "employing industry" to which the notice and other sanctions apply). Accordingly, this case is not moot because Sands and her co-workers remain entitled to remedial notices.

Second, the Board on remand must consider a remedy affording relief to the many "similarly situated" employees in the Kroger bargaining unit who have also

[1] A contrary result would preclude judicial review of many ULP cases, including those arising during organizing campaigns, which typically end before judicial review and often involve only notice posting remedies. Not to be forgotten, too, is the tortured procedural history of this case, where the Board dillydallied for six long years in reaching a judicially reviewable decision.

been denied a proper *Beck* notice since the filing of this charge in June 2005. *See, e.g., Rochester Mfg. Co.*, 323 NLRB 260, 263 (1997) (ordering class-wide retroactive remedies in a case where the union failed to provide new hires with proper *Beck* notice); *Newspaper & Mail Deliverers' Union (NYP Holdings, Inc.)*, 361 NLRB No. 26 (Aug. 21, 2014) (same). Sands possesses third party standing under the Act to seek judicial review on behalf of her fellow Kroger employees who, like her, may not have received proper notice. *See Bloom v. NLRB*, 153 F.3d 844, 849 (8th Cir. 1998), *rev'd on other grounds sub nom. OPEIU, Local 12 v. Bloom*, 525 U.S. 1133 (1999) (case not moot when charging party, who no longer worked for employer, sought review to "vindicate the rights of all those currently affected by the facially invalid [agreement]").

The reason for granting third party standing is that a charging party's petition for review of a Board decision "is vindicating not a private but the public right." *Local 282, IBT v. NLRB*, 339 F.2d 795, 799-800 (2d Cir. 1964); *see also Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941) (Board has power to issue broad equitable relief to effectuate public not private policies); *cf. National Licorice Co. v. NLRB*, 309 U.S. 350, 362-64 (1940); *Hiney*, 733 F.2d at 1171. The NLRA does not require that charging parties have personal standing to file charges, *see NLRB v. Ind. & Mich. Elec. Co.*, 318 U.S. 9, 17-18 (1943), yet makes them responsible for petitioning for review of adverse Board decisions. *See Local 282*,

339 F.2d at 799-800. Charging parties can thus seek review for third parties under this statutory scheme. *See Bloom*, 153 F.3d at 849. Otherwise, many Board decisions will be immunized from federal judicial review.

Denial of judicial review is particularly baseless here. The Board has ignored this Court's controlling precedent. If Sands is denied review, the Board's decisional recalcitrance will escape judicial review not only today, but perhaps *permanently* because the General Counsel rarely issues complaints contrary to Board precedent. In fact, the General Counsel has already withdrawn a pending complaint regarding disclosure requirements based on the decision in this case below (while explicitly refusing to wait for the results of this Court's review).[2] The General Counsel's refusal to issue a complaint is exempt from all judicial review. *See NLRB v. UFCW, Local 23*, 484 U.S. 112, 122-23 (1987). The Board will have thumbed its nose at the decisions of this Court, and will have effectively insulated its decision from review.[3]

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[2] *SEIU 1199 (ResCare, Inc.)*, NLRB No. 11-CB-003743, raised issues identical to those herein. The NLRB General Counsel held that case in abeyance for close to six years, pending a decision in Ms. Sands' case. Once the decision was issued in *UFCW, Local 700 (Kroger)*, 361 NLRB No. 39 (2014), the General Counsel summarily dismissed the *SEIU/ResCare* case, refusing to wait for a ruling from this Court in the instant appeal, despite a direct request that it do so.

[3] Even assuming, *arguendo*, the case is moot, the Board's opinion must be vacated under the vacatur doctrine. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23 (1994) ("vacatur must be granted where mootness results from the unilateral action of the party who prevailed in the lower court"); *American Family*

SUMMARY OF ARGUMENT

In an admirable display of candor, the Board majority admits its decision *must* be reversed by this Court: "We recognize that a three-member panel of [the D.C. Circuit] will, if this case comes before it, be constrained to apply *Abrams* and *Penrod* as they stand." (JA 84). The NLRB majority "respectfully disagree[s]" with this Court's long line of *Beck* cases, and believes this Court failed to give "sufficient weight" to invisible and hair-splitting distinctions that the Board majority divines to "balance" away employees' free speech rights. (JA 83). The Board majority rehashes arguments previously made and unanimously rejected by this Court in *Penrod*, 203 F.3d at 45.

In *Hudson*, 475 U.S. 292, the Supreme Court established procedural protections that unions must afford to public sector employees before any agency fees can be demanded or seized. Since then, this Court has repeatedly held that unions operating in the private sector must also provide these same procedural protections, in order to fully comply with their duty of fair representation. *Penrod*,

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Life Assurance Co. v. FCC, 129 F.3d 625, 630-31 (D.C. Cir. 1997) (vacating FCC order, which found petitioner had violated the Communications Act); *Radiofone, Inc. v. FCC*, 759 F.2d 936 (D.C. Cir. 1985) (concluding petitioner's challenge to a FCC ruling was moot and vacating the ruling at issue); *see also A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 329 (1961) (doctrine of vacating cases that become moot on review "equally applicable to unreviewed administrative orders"). For the reasons listed above, however, the case is not moot.

203 F.3d at 47-48; *Abrams*, 59 F.3d at 1379 (relying on *Hudson*'s "[b]asic considerations of fairness," 475 U.S. at 306, to require such protections for private sector employees); *Miller v. Air Line Pilots Ass'n*, 108 F.3d 1415, 1418-20 (D.C. Cir. 1997), *aff'd*, 523 U.S. 866 (1998); and *Ferriso v. NLRB*, 125 F.3d 865, 867-70 (D.C. Cir. 1997).

The issue here concerns the type of notice and financial disclosure due to new hires and nonmember employees, who are otherwise known as "potential objectors." In *Hudson*, the Supreme Court held that:

> Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the *potential objectors* be given sufficient information to gauge the propriety of the union's fee. Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect the careful distinctions drawn in *Abood*.

475 U.S. at 306 (emphasis added) (footnote omitted). Thus, *Hudson* requires a union to provide new hires and nonmembers with specific information about the union's reduced fee calculation and financial disclosure to explain and justify that reduced fee calculation *before* making them elect membership or nonmembership status or filing an objection to supporting pro-union political activities under *Beck*.

The NLRB, however, puts its thumb on the scale and favors keeping potential objectors "in the dark," and thereby limits "objectors" who would otherwise pay reduced fees. It rejects this Court's holding in both *Penrod* and

Abrams that private sector employees are entitled to exactly what *Hudson* requires for public employees: a detailed notice that actually informs potential objectors about the amount of the reduced fee calculation, and provides information about how that reduced fee was calculated, before electing to be full members or objectors.

Instead, the Board majority finds it perfectly acceptable for unions to require employees to file their *Beck* objections without any information on the precise economics of that choice. In taking a position so inimical to employees' Section 7 right to be fully informed, 29 U.S.C. § 157, the Board stands alone against a uniform body of decisions requiring a detailed notice to potential objectors in advance of any requirement that they file objections.

Lastly, the Board's conduct in this case should be seen as non-acquiescence, which this and other circuit courts have condemned. The Board's refusal to follow this Circuit's clear precedents is lawless.

STANDARD OF REVIEW

While Board decisions are normally entitled to some deference, the Court owes no deference here. This case is "squarely controlled" by Supreme Court and Circuit precedent. *See Penrod*, 203 F.3d at 47 ("We need not consider whether to defer to such reasoning, for this issue is squarely controlled by *Hudson* as interpreted by this court in *Abrams*.").

ARGUMENT

FUNDAMENTAL FAIRNESS REQUIRES THAT A UNION'S INITIAL *BECK* NOTICE INCLUDE THE ACTUAL DUES REDUCTION AN OBJECTOR WILL RECEIVE.

The Board majority already has conceded that its decision *must* be reversed by this Court: "We recognize that a three-member panel of [the D.C. Circuit] will, if this case comes before it, be constrained to apply *Abrams* and *Penrod* as they stand." (JA 84). As shown below, Sands and the Board are in agreement: all roads lead to reversal.

A. The NLRA and the Union's duty of fair representation.

Section 7 of the Act affords employees the right to refrain from membership in a union or supporting collective bargaining. 29 U.S.C. § 157. The Act, however, limits Section 7's right to refrain in Section 8(a)(3) of the Act. 29 U.S.C. § 158(a)(3). Section 8(a)(3) authorizes "union-security" agreements requiring employees to pay "to the union an amount equal to the union's initiation fees and dues." *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 37 (1998) (citing *NLRB v. Gen. Motors Corp.*, 373 U.S. 734, 742-43 (1963) (noting the membership requirement under Section 8(a)(3) "'is whittled down to its financial core'")); *see generally Harris v. Quinn*, 134 S. Ct. 2618, 2633 (2014) (noting that the Court's prior cases allowing compulsory fees "did not foresee the practical problems that would face objecting nonmembers").

In *Beck*, the Supreme Court concluded "that § 8(a)(3), like its statutory equivalent, § 2, Eleventh of the [Railway Labor Act ("RLA"), 45 U.S.C. § 152], authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" 487 U.S. at 762-63 (quoting *Ellis v. Bhd. of Ry. Clerks*, 466 U.S. 435, 448 (1984)). Under *Beck*, employees may never be forced to pay for a union's political, ideological, and non-representational activities. Thus, the exaction of fees beyond those necessary to finance collective bargaining activities violates the judicially created duty of fair representation. *See Miller*, 108 F.3d at 1420. As this Court explained in *Abrams*, a "union's fair representation duty in the context of a mandatory agency fee hinges on its compliance with section 8(a)(3) of the NLRA," as interpreted by the Supreme Court in *Beck*. 59 F.3d at 1377. Accordingly, employees who object to union expenditures are entitled to pay reduced dues.

In *California Saw & Knife Works*, 320 NLRB 224 (1995), *enforced sub nom. International Ass'n of Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), the Board created a set of procedures purportedly meant to implement *Beck* and protect nonmembers' right not to fund political and ideological activities. The Board outlined a three stage process: (1) the initial notice stage, requiring a notice to potential objectors to inform them of their rights to be nonmembers and

objectors; (2) the objection stage, at which an employee who made an objection receives detailed financial information from the union explaining how it arrived at its chargeable amount; and (3) the challenge stage, for employees who dispute the union's calculation of its chargeable expenses. Currently, and in steadfast opposition to the Supreme Court and this Circuit, the Board mandates that potential objectors at the first stage make an objection "in the dark," and only discover the amount of the reduction they will receive at "stage 2."

B. The Supreme Court and this Court have held it is vital for new hires receiving an initial *Beck* notice to know the reduction they will receive before they are forced to choose to join or object.

The Supreme Court in *Hudson* established various procedural rights to which all "potential objectors" are entitled, as a precondition to the collection of any compelled fees. *Hudson* held that:

> *Basic considerations of fairness*, as well as concern for the First Amendment rights at stake, also dictate that *the potential objectors be given sufficient information to gauge the propriety of the union's fee*. Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect the careful distinctions drawn in *Abood* [*v*. *Detroit Board of Education*, 431 U.S. 209 (1977)].

475 U.S. at 306 (emphasis added) (footnote omitted); *see also Tierney v*. *City of Toledo*, 824 F.2d 1497 (6th Cir. 1987). Thus, new employees ("potential

objectors") must be given an *advance* notice that sufficiently informs them of their rights and the ramifications of the choices the union is forcing them to make.[4]

While *Hudson* concerned public sector employees and arose under the First Amendment, this Circuit has consistently held for nearly twenty (20) years that the *Hudson* procedures must be provided to all nonmembers and potential objectors subject to compulsory fees. *Penrod*, 203 F.3d at 47-48; *Abrams*, 59 F.3d at 1377-

[4] The UFCW and NLRB are jointly forcing new hires who do not support UFCW politics to "opt-out" affirmatively via the filing of *Beck* objections. The UFCW, like most unions, purposefully and carefully sets the new hire's "default" to automatically pay the political portion of the union dues unless he or she overcomes inertia, ignorance, coercion, or fear and affirmatively opts-out. *See Knox*, 132 S. Ct. at 2290; *Davenport v. Wash. Educ. Ass'n*, 551 U.S. 177 (2007). However, if the "choice architecture" was structured differently, so that all employees were automatically charged the "chargeable" rate for legitimate collective bargaining activities, and asked to voluntarily "opt-in" to paying more to support the UFCW's nonchargeable political activities, then the UFCW would not even need to provide specific disclosure amounts in the "stage 1" notice, since the dues reduction would already be figured in to what all new hires must pay as a condition of employment. But the UFCW and other politically active unions have a huge pecuniary interest in hiding these issues from new hires and watching them default into joining and paying full union dues. *See Knox*, 132 S. Ct. at 2290 (Court noting that prior decisions mandating an objection "did not pause to consider the broader constitutional implications of an affirmative opt-out requirement"). It is for this reason that so many unions try to minimize the disclosure they give to new hires, *see Penrod*, or create illegal traps for unwary *Beck* objectors, such as "annual renewal" or "certified mail" requirements. *See, e.g., International Ass'n of Machinists & Aerospace Workers*, 355 NLRB 1062 (2010); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union*, 357 NLRB No. 48 (Aug. 16, 2011); *California Saw*, 320 NLRB at 236-37 (striking down certified mail requirement). In this sense, the NLRB and UFCW have picked their poison. By requiring an affirmative "opt-out," the UFCW must comply with, and the NLRB must enforce, the procedural requirements mandated by *Hudson* to all "potential objectors."

81; *Ferriso*, 125 F.3d at 867-70; *Miller*, 108 F.3d at 1419-20. In contrast, the Board has symbolically torched *Hudson* and this Circuit's decisions, and undermined nonmembers' Section 7 right to refrain from collective activity. The Board does require an "initial notice" to potential objectors, but parts company with *Hudson* and this Circuit's decisions by holding that "potential objectors" are not entitled to receive, in advance of objecting, any information about the amount of the fee reduction they will actually receive. (JA 85); *see also California Saw*, 320 NLRB at 231-33. This, of course, puts "potential objectors" in the precarious predicament of being required by the Board and UFCW to choose nonmembership and object "in the dark," without any information about the financial ramifications of the important decision they are being forced to make. This is contrary to *Hudson*'s admonition that "[l]eaving the nonunion employees *in the dark* about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect the careful distinctions drawn in *Abood*." 475 U.S. at 306 (emphasis added) (footnote omitted).

The Board's utter recalcitrance in recognizing the obvious relevance of this fee information to the employee's required choice either to be a full member or an objector further undermines the basic policy of the NLRA. Section 7 of the Act protects the freedom to choose union membership or nonmembership. *Pattern Makers' League v. NLRB*, 473 U.S. 95, 104 (1985) (the policy of the NLRA is

"voluntary unionism"); *Bloom*, 153 F.3d at 849-50 ("Enlisting in a union is a wholly voluntary commitment; it is an option that may be freely undertaken or freely rejected."). According to the NLRB's "logic," only *after* taking the uninformed step of declaring themselves to be nonmembers and objectors do the employees have a right to receive any information about the financial ramifications of the choice they have just been forced to make "in the dark."

In treating employees' Section 7 rights so cavalierly, the Board ignores the reality that the decision to refrain from union membership and submit a *Beck* objection carries with it serious legal and economic consequences. Indeed, choosing nonmembership or *Beck* objector status has important and "real world" implications for employees. For example, employees who join a union are subject to internal union discipline and can be fined and sued in state court for violating union rules and dictates, while such disciplinary power does not extend to nonmembers. *Pattern Makers'*, 473 U.S. 95 (employees can resign at will to escape union discipline); *NLRB v. Boeing Co.*, 412 U.S. 67 (1973) (unions can sue in state court to collect fines from members); *Office & Prof'l Emps. Int'l Union, Local 251 (Sandia Corp.)*, 331 NLRB 1417 (2000) (upholding union discipline over "internal" union matters). Similarly, employees choosing nonmembership are not allowed to vote in contract ratification elections, strike votes or any other important workplace matters deemed "internal" by the union. *Kidwell v. Transp.*

Commc'ns Int'l Union, 946 F.2d 283 (4th Cir. 1991). Moreover, employees choosing nonmembership or *Beck* objector status are frequently discriminated against by union officials when processing their grievances or operating hiring halls. *International Union, UAW v. NLRB*, 168 F.3d 509 (D.C. Cir. 1999) (UAW discriminates against nonmembers by refusing to allow them to invoke its "internal" grievance system); *American Postal Workers Union*, 328 NLRB 281 (1999) (union discriminates against nonmember in grievance processing); *Oil Workers Local 5-114 (Colgate-Palmolive Co.)*, 295 NLRB 742 (1989) (disparate treatment in handling a nonmember's grievance); *International Bhd. of Teamsters, Local 509 (Touchstone Television Prods)*, 357 NLRB No. 138 (Dec. 13, 2011) (union hiring hall refuses to place employee on referral list because he was not a member). In short, the choice an employee is forced to make regarding nonmember or *Beck* objector status has real world consequences, to which the NLRB and UFCW care little.

Contrary to the Board majority, it is relevant to an employee called upon to make this critical decision whether his agency fee reduction will be approximately 20%, as in *Abrams v. Communications Workers of America,* 818 F. Supp. 393, 397 (D.D.C. 1993), 88%, as was finally adjudicated in *Lehnert v. Ferris Faculty Ass'n*, 643 F. Supp. 1306, 1334-35 (W.D. Mich. 1986), *aff'd*, 881 F.2d 1388 (6th Cir. 1989), *aff'd in part, rev'd in part*, 500 U.S. 507 (1991), or 13.9%, as claimed by

the UFCW in the instant case.[5] To be able to make free and intelligent choices about an issue that may well affect their entire working lives, employees need specific information in *advance* about their own potential fee obligation, not a "Catch-22" process in which they get information only *after* they have made their decision.

This is why, and for good reason, *Penrod* held that "*Hudson* carries with it the requirement that unions give employees 'sufficient information to gauge the propriety of the union's fee'—*i.e.*, the percentage reduction." 203 F.3d at 48 (*quoting Hudson*, 475 U.S. at 306). "[F]or how else could they 'gauge the propriety of the union's fee'"? *Penrod*, F.3d at 47.

This case provides a clinical example of why the chargeability figures are necessary. Sands was lulled into membership by the UFCW's "welcome" materials, which buried its *Beck* notice in legalese and hard to read fine print while prominently spelling out termination for nonpayment of full dues. It is likely that Sands would have resigned earlier, or not joined the UFCW at all, if it had told her

[5] The Board claims that potential objectors do not need to know the precise amount of their fee reduction prior to objecting because it assumes, *ipse dixit*, that "a *Beck* objection will usually turn on ideological concerns, the precise reduction in fees and dues often being less important." (JA 85). The Board makes no mention of the bundle of rights an employee is forced to give up when he chooses nonmembership and makes an objection. It is far more reasonable to assume a rational employee weighs *all* of the information at hand, including the amount of the dues reduction, when choosing to stand apart (and likely provoke anger or retaliation) from his "exclusive bargaining representative" by making an objection.

the reduced fee amount initially and been less secretive about her rights and options.[6] Her own resignation letter states she was "deliberately misled by union officials regarding my right to remain a nonmember and to receive a reduction in any payment I would have to make pursuant to a 'union security' clause." (JA 22). Depriving her of this information served as an impediment to the exercise of her Section 7 rights, as she remained a union member for several months, during which time she paid full dues and was vulnerable to union discipline.

C. The Board's tortured logic disrespects this Court's decisions.

The Board majority cited several reasons for its holding, each of which is easily disposed of in light of common sense, this Court's controlling precedents, and "[b]asic considerations of fairness," *Hudson*, 475 U.S. at 306.

First, the Board tortures the English language and rewrites *Hudson* to fit its purposes, while admitting that it does not consider *Hudson* to be a binding

[6] The Union may argue that Sands' eventual objection lessens her need to have received the reduced fee information in the first place because she was not truly open to union membership. This is incorrect, as Sands' ability to resign and object after learning of her rights from another source does not justify the Union's failure to provide adequate information in the first place. Successfully overcoming a hurdle to the exercise of a right does not mean the hurdle is lawful. As this Court recognizes, the law must be fashioned to facilitate employees' ability to make vital decisions free of confusion and coercion, not in darkness. *See Penrod*, 203 F.3d at 47-48; *Hudson*, 475 U.S. at 306 (condemning the union practice of keeping nonmembers "in the dark"); *General Tire & Rubber Co. v. NLRB*, 451 F.2d 257, 259 n.3 (1st Cir. 1971) ("Good conscience requires no such counsel of perfection.").

precedent in any event. (JA 82-83). The Board argues that *Hudson* dealt with information to employees not at the initial notification stage, but after they had already become objectors. Thus, according to the Board, the Supreme Court misused the English language and did not know what it was saying when it held that "potential objectors" must be given an initial notice containing "sufficient information to gauge the propriety of the union's fee." *Hudson*, 475 U.S. at 306. By this argument, the Board rewrites *Hudson*, changing the term "potential objectors" to those "*already* objecting." (JA 82) (emphasis in original).

But *Hudson* does not support the Board's interpretation—the Supreme Court's recitation of facts in *Hudson* shows otherwise: "In March 1983, the four nonmembers [all of whom had objected], joined by three other nonmembers who had *not sent any [objection] letters*, filed suit in Federal District Court." 475 U.S. at 297 & n.2 (emphasis added). Thus, the *Hudson* litigants clearly included non-objectors, and the Supreme Court had those employees in mind when it held that even "potential objectors" are entitled to full financial disclosure about "the basis for the proportionate share" before they are required to object. This Court has twice rejected this fanciful rewriting of *Hudson*, in *Abrams* and *Penrod*:

> The dissent takes issue with our interpretation of *Hudson* but the quoted language makes clear that *potential* objectors must be given adequate notice. Although the Supreme Court addressed the issue in the context of "information about the basis for the proportionate share" of financial core expenses, 475 U.S. at 306, the same "basic considerations of fairness" necessarily extend to a union's notice to workers of the *right* to object to payment of any expenses beyond the financial core.

Abrams, 59 F.3d at 1379 n.6 (emphasis in original); *see also Penrod*, 203 F.3d at 45-48. Of course, the Board's decision cannot cite a single court that has limited *Hudson*'s application only to those "*already* objecting," as no such case exists. The Board majority's cramped interpretation stands alone against this Circuit and other federal courts. *See Tierney*, 824 F.2d at 1503 ("This information must also be disclosed to all non-members whether or not they have yet objected to the union's ideological expenditures.") (footnote omitted); *Damiano v. Matish*, 830 F.2d 1363, 1370 (6th Cir. 1987) (the notice must be provided to all potential objectors in advance, and it "must inform the non-union employee as to the amount of the service fee, as well as the method by which that fee was calculated").

Second, the Board majority shuns *Hudson*'s "constitutional standards" when it comes to providing a notice to "potential objectors" under the NLRA. But taken together, this Court's decisions in *Penrod*, *Abrams*, *Miller*, and *Ferriso* already hold that *Hudson*'s standards apply as a matter of "fundamental fairness" under the NLRA.

Abrams was unequivocal on this point:

> Although in *Hudson* the challenge to the union agency fee was made on constitutional grounds, its holding on objection procedures applies equally to the statutory duty of fair representation inasmuch as the holding is rooted in "[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake."

59 F.3d at 1379 n.7, quoting *Hudson*, 475 U.S. at 306. Shortly thereafter, *Miller* held that "[w]e see no reason why this statutory duty of fair representation owed to nonmember agency shop employees carries any fewer procedural obligations than does a constitutional duty." 108 F.3d at 1420. Finally, *Ferriso* put the issue to rest by holding that "this circuit has found that the content of the NLRA's duty of fair representation is guided by the standards of *Hudson*." 125 F.3d at 868. By the time *Penrod* was decided, the issue was a foregone conclusion. The Board's protestations that *Hudson* is "only" a constitutional decision that can be distinguished away like chaff has been thoroughly rebuffed by this Court.

Just as *Ferriso* declared the NLRB "mistaken" in its view that *Hudson* had no application to the issue of independent audits of union financial disclosure, 125 F.3d at 869, this Court must once again declare the NLRB "mistaken" in its holding that an "initial *Beck* notice" is adequate even when it fails to provide nonmembers with information about the actual amount of their dues reduction, or financial disclosure to justify that dues reduction.

Moreover, and contrary to the Board majority, prior Boards have paid heed to this Court and determined that *Hudson*'s standards apply to private sector union disclosure requirements. *See, e.g., Teamsters Local Union No. 579 (Chambers & Owen, Inc.)*, 350 NLRB 1166 (2007). There, the Board accepted the precept that *Hudson* did not only rely on the First Amendment rights of employees, but also on "[b]asic considerations of fairness" to uphold the fundamental importance of providing adequate information regarding dues and fees reductions to nonmember objectors. *Id*. at 1170.

Third, the Board majority justifies its jettisoning of "potential objectors" from key parts of the *Hudson* notice requirement by surmising that unions would be "subjected to considerable burdens" if they had to present these employees with an actual reduced fee calculation and explanation of that calculation. (JA 86). But these same considerations are true in the public sector under *Hudson*, and this alleged "burden" did not prevent the Supreme Court and every other federal court that has considered this issue from mandating that every public sector union give a complete advance notice to all "potential objectors." Nor have these allegedly "burdensome" requirements stopped public sector unions from adopting valid procedures, meeting their disclosure obligations and collecting the agency fees. *See, e.g., Gwirtz v. Ohio Educ. Ass'n*, 887 F.2d 678 (6th Cir. 1989); *Jibson v. Mich. Educ. Ass'n*, 30 F.3d 723 (6th Cir. 1994). Indeed, since many of the largest

industrial "private sector" unions (like the United Auto Workers, Communications Workers of America, Service Employees International Union, and Teamsters) also represent public sector employees, it can be presumed they are already meeting this *Hudson* disclosure obligation. To say that these unions will have to meet an "additional" burden if *Hudson* applies to "potential objectors" under the NLRA overstates the case.[7]

Moreover, there was absolutely no burden on the UFCW here, for one simple reason: the Union already possessed the reduced fee figures and financial disclosure, as demonstrated by the fact that it was able to provide it to Sands just one day after her objection was received. (JA 23). And, as discussed at footnote 4

[7] Any claim of "burden" is unbelievable as the UFCW and its locals have dealt with hundreds of ULP charges alleging violations of *Beck* and thus should be able to provide the percentage reduction to potential objectors without burden. For example, UFCW, Local 700 was the subject of multiple ULP charges in the years prior to Sands' charge. *See, e.g.*, *UFCW Local 700 (Kroger)*, No. 25-CB-8807 (July 28, 2004); *UFCW Local 700 (Kroger)*, No. 25-CB-8329-1 (July 21, 2000); *UFCW Local 700 (IBP, Inc.)*, No. 25-CB-8220-2 (July 29, 1999). UFCW locals across the nation are no stranger to *Beck* compliance. *See*, *e.g.*, *UFCW Local 1459*, No. 1-CB-10464 (May 27, 2005) (Mass.); *UFCW Local 1102*, No. 2-CB-20511 (Nov. 11, 2005) (N.Y.); *UFCW Local 38*, No. 6-CB-11329 (July 24, 2006) (Pa.); *UFCW Local 1099*, No. 9-CB-9760 (Apr. 10, 1998) (Ohio); *UFCW Local 227*, No. 9-CB-12507 (Apr. 8, 2011) (Ky.); *UFCW Local 88*, No. 14-CB-10640 (Feb. 9, 2011) (Mo.); *UFCW Local 367*, No. 19-CB-8697 (June 29, 2001) (Wash.); *UFCW Local 324*, No. 21-CB-12488 (March 26, 1998) (Cal.) (Charges compiled in Addendum A). These are just a small sample of the ULP charges that have been levied for decades against the UFCW for violations of *Beck*. The bottom line is not that the UFCW unions cannot comply with *Beck* and *Penrod*, but that they systematically refuse to do so.

supra, the UFCW should not be heard to cry about burdensomeness, since the initial *Beck* notice is needed only because the UFCW and NLRB choose to create and administer an "opt-out" system, which defaults all employees into supporting union politics unless they affirmatively opt-out. *See Knox*, 132 S. Ct. 2277; *Davenport*, 551 U.S. 177.

In elevating the alleged "costs and burdens" of *Hudson* compliance over the needs of the "potential objectors" to make a free and informed choice about union membership and compelled support of partisan political activities, the NLRB shows its administrative bias—a federal agency more interested in protecting union coffers than the individual employees whose rights are at the heart of the statutory scheme the Board is directed to enforce.[8] However, "[b]y its plain terms . . . the NLRA confers rights only on *employees*, not on unions or their nonemployee organizers." *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) (emphasis in original); *see also Pattern Makers'*, 473 U.S. at 104 (the policy of the NLRA is "voluntary unionism").

[8] The Board's condescending view of objecting employees solidifies this point. The Board claims employees only dissent from union expenditures for ideological reasons, rather than weighing all the costs of full membership versus objecting nonmembership. (JA 85). However, if that were the case, why would a union object to providing the chargeability amount to all potential objectors? That is, if objecting was purely an ideological choice, then a union would have nothing to fear from revealing the reduced amount an employee pays. Unions "hide the ball" from potential objectors because it does make a difference to employees, who deserve to know the full information *before* they make such an important decision.

The Board's slavish concern for the UFCW's alleged "burden" also ignores federal court decisions like *Andrews v. Education Ass'n*, 829 F.2d 335, 339 (2d Cir. 1987), which held that:

> the procedures mandated by *Hudson* are to be accorded all nonmembers of agency shops regardless of whether the union believes them to be excessively costly. Excessive cost cannot form the basis for allowing the union or the government to avoid *Hudson*'s requirement[s].

See also Hudson, 475 U.S. at 306 n.17 ("that private sector unions have a duty of disclosure [under the LMRDA] suggests that a limited notice requirement does not impose an undue burden on the union"); *Beck*, 487 U.S. at 755 ("congressional opponents of the Taft-Hartley Act's union-security provisions understood the Act to provide only the most grudging authorization of such agreements, permitting 'union-shop agreement[s] only under limited and administratively burdensome conditions'") (citation omitted); *Keller v. State Bar*, 496 U.S. 1, 16-17 (1990) (quoting with approval *Keller v. State Bar*, 767 P.2d 1020, 1046 (Cal. 1989) (Kaufman, J., dissenting) (while providing an adequate explanation of the fee "'would likely result in some additional administrative burden to the bar and perhaps prove at times to be somewhat inconvenient, such additional burden or inconvenience is hardly sufficient to justify contravention of the constitutional mandate'").

Plainly stated, employees' Section 7 right to make a free and unfettered choice to join a union or refrain is a "cost of doing business" for unions intent on compelling nonmember employees to pay dues or fees as a condition of their employment, especially when the unions choose to structure the choice so that employees will easily default into paying for the political portion of the dues. (*See* note 4, *supra*). Unions required to shoulder this allegedly slight burden do so solely as a result of their own voluntary decisions to seek the agency fees from nonmembers in the first place. *Tierney*, 824 F.2d at 1503 n.2 (the detailed notice and disclosure requirements of *Hudson* do not impose an undue burden on the union, because "the union triggers no disclosure requirement until it voluntarily seeks to collect service fees from the non-union members"). And as noted already, virtually every large union already has annual *Beck* audits performed, so they are simply "hiding the ball" by not sharing that already-available information with potential objectors.

Lastly, a small local union that does not have ready access to its own percentage reduction has two choices, both of which ease any potential financial burden. First, a local union is permitted by this Court to adopt the "local presumption." *Thomas v. NLRB*, 213 F.3d 651 (D.C. Cir. 2000). Under the local presumption, a local union applies to its own expenditures the chargeable versus nonchargeable percentages calculated by its international affiliate (which is likely

to already have the requisite disclosure). Second, if the local union does not want to perform an audit, it can tell the truth to its potential objectors: that the local union does not have a breakdown and the objector will not be required to pay at least that portion of the dues until an audit is performed. *Tierney v. City of Toledo*, 917 F.2d 927, 937 (6th Cir. 1990) ("If [the international affiliate] cannot disclose or does not see fit to disclose to the local union how [its] funds are spent, then the local union may not include this [money] in its chargeable costs.").

In short, what should be an individual employee's free and unfettered choice under Section 7 of the NLRA is often an exercise fraught with union roadblocks, recalcitrance, restraint, and recriminations. The best way to end this subtle and not-so-subtle coercion, and ensure that all new hires—the "potential objectors" described in *Hudson*—have a free and unfettered choice to support the union or refrain is through more sunlight, not more "dark[ness]." *Hudson*, 475 U.S. at 306 (condemning the union practice of keeping nonmembers "in the dark"). The Board majority's decision keeping nonmembers "in the dark" in the initial *Beck* notice should be reversed.

D. The Board majority raises non-acquiescence to new heights.

As shown above, this Court's compelled fee jurisprudence is longstanding and consistent in its protection of individual employees. In the face of this Court's many compelled fee cases, the Board majority asserts that, with "due respect to the

District of Columbia Circuit," it declines to follow those decisions. (JA 83). However, this Court has condemned such Board "non-acquiescence" in the harshest of terms:

> [T]he Board is not a court nor is it equal to this court in matters of statutory interpretation. Thus, a disagreement by the NLRB with a decision of this court is simply an academic exercise that possesses no authoritative effect. . . . Congress has not given to the NLRB the power or authority to disagree, respectfully or otherwise, with decisions of this court. For the Board to predicate an order on its disagreement with this court's interpretation of a statute is for it to operate outside the law. Such an order will not be enforced.

Yellow Taxi Co. v. NLRB, 721 F.2d 366, 382-83 (D.C. Cir. 1983) (citations omitted). In *Yellow Taxi*, this Court also noted that at least four sister circuits have also criticized the Board for its non-acquiescence. *Id*. at 383. Here, a rogue Board majority that refuses to follow this Court's precedents, and even some of the Board's own precedents like *Chambers & Owen, Inc*., 350 NLRB 1166, must be reined in again.

CONCLUSION

The Board majority candidly admits that its decision below *must* be reversed by this Court. (JA 84). This Court should follow suit and reverse the decision and remand the case to the Board with instructions to enter a decision for Sands, and order proper notice posting and *nunc pro tunc* remedies for those similarly situated in the bargaining unit. This Court should also take the opportunity to remind the Board that "a disagreement by the NLRB with a decision of this Court is simply an

academic exercise that possesses no authoritative effect." *Yellow Taxi*, 721 F.2d at 382-83.

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Date: February 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I further certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system as they are registered users.

Date: February 11, 2015

By: /s/ Aaron B. Solem

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 8,642 words in accordance with the word count typed in 14 point typeface and is in compliance with the type-volume limitations of FRAP 32(a)(7)(B) and (C) and this Court's briefing order.

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STATUTORY ADDENDUM

Section 7 of the NLRA, 29 U.S.C. § 157

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

* * *

Addendum A

43999

NATIONAL LABOR RELATIONS BOARD
AMENDED CHARGE AGAINST
LABOR ORGANIZATION

Case	Date Filed
25-CB-8807	07/28/04

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name United Food & Commercial Workers, Local 700 UFCW

b. Union Representative to contact C. Lewis Piercey, President

c. Telephone No. (317) 248-0391

d. Address *(street, city, state and ZIP code)* 5638 Professional Circle, Indianapolis, IN 46241-5092

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) of the National Labor Relations Act. and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

1. Charging Party Roy T. Crabtree ("Mr. Crabtree") is employed by Kroger Company ("the employer") in a bargaining unit represented by United Food & Commercial Workers, Local 700 ("the union"). Mr. Crabtree is not a member of the union.
2. The employer and the union have entered a collective bargaining agreement containing a union security clause.
3. Mr. Crabtree is a Beck objector. The union is charging Mr. Crabtree compulsory fees.
4. The union has failed to provide Mr. Crabtree with a breakdown of the chargeable and non-chargeable expenses independently audited.
5. The union has failed to provide Mr. Crabtree with an independent audit of affiliation expenses. The General Counsel has issued a complaint on this issue, and it is currently before the Board. See Teamsters Local Union No. 579 (Chambers & Owen, Inc.), Case 30-CB-4550-1 (NLRB, complaint filed Aug. 28, 2003).
6. The union wrongly categorizes organizing expenses as 100% chargeable, thereby charging non-member objectors for organizing outside a relevant market.
7. The actions of the union as described in paragraphs 4 through 6 restrain and coerce Mr. Crabtree and other bargaining unit employees in the exercise of their Section 7 rights to refrain from collective activity and violate Section 8(b)(1)(A) of the Act, as well as the union's duty of fair representation and fair dealing. Mr. Crabtree files this charge on behalf of himself and all other similarly situated employees.

3. Name of Employer Kroger Company

4. Telephone No. (574) 522-2198

5. Location of plant involved *(street, city, state and ZIP code)* 1720 Fulton St., Elkhart, IN 46514

6. Employer representative to contact Gary McMahan

7. Type of establishment *(factory, mine, wholesaler, etc.)* Grocery Store

8. Identify principal product or service Retail

9. Number of workers employed Approximately 800

10. Full name of party filing charge Roy T. Crabtree

11. Address of party filing charge *(street, city, state and ZIP code)* 50873 CR 7, Elkhart, IN 46514

12. Telephone No. (574) 262-8626

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By John R. Martin — John R. Martin — Staff Attorney
(signature of representative or person making charge) *(title or office, if any)*

Address Nat'l Right to Work Legal Def. Found. Suite 600, 8001 Braddock Rd., Springfield, VA 22160 — (703) 321-8510 *(Telephone No.)* — 7/26/04 *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

FORM NLRB-508 (6-90)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FORM EXEMPT UNDER 44 U.S.C. 3512

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
25-CB-8329-1	7/21/00

INSTRUCTIONS: File an original together with four copies of this charge and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name
United Food and Commercial Workers Union Local 700

b. Union Representative to contact
James Jacobs, President

c. Telephone No.
(317) 248-0391
Fax No.

c. Address (*street, city, state and ZIP code*)
5538 Professional Circle, Indianapolis, Indiana 46241-5092

e. The above-named organization(s) or its agents has (*have*) engaged in and is (*are*) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (*list subsections*) (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

Since March 2000, the Union has violated the Act by threatening, restraining, and coercing employees to become members in and financially support the Union without informing them of their rights under the Act and under the Collective Bargaining Agreement's union security clause. Local 700 has further violated the Act by threatening these and other employees with termination if they do not accede to Local 700's unlawful demands and by falsely creating the impression that the Company supports the Union's unlawful demands and threats. Local 700 also has violated the Act by requiring employees who elect non-member status to pay full regular monthly Union dues and fees. Union Representative Herman Jackson further violated the Act by telling employees they had to join the Union and, if they did not sign the membership application and dues deduction forms within 30 days, he would come into the stores and escort the employees out of their jobs (terminate them).

3. Name of Employer
The Kroger Co., Kroger Limited Partnership I

4. Telephone No.
See 12 below.
Fax No.
(317) 916-9076

5. Location of plant involved (*street, city, state and ZIP code*)
5690 Castleway W. Drive, Indianapolis, IN 46250

6. Employer representative to contact
Kenneth B. Siepman

7. Type of establishment (*factory, mine, wholesaler, etc.*)
Retail Stores

7. Identify principal product or service
Food

8. Number of workers employed
Approximately 10,000

10. Full name of party filing charge
The Kroger Co., Kroger Limited Partnership I

11. Address of party filing charge (*street, city, state and ZIP code*)
John M. Flynn, Esq.
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202-1100

12. Telephone No.
(513) 762-4303
Fax No.
(513) 762-4935

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Kenneth B. Siepman
(*signature of representative or person making charge*)

Attorney
(*Print or type name and title or office, if any*)

Address OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
One Indiana Square, Suite 2300
Indianapolis, IN 46204

(Fax) (317) 916-9076
(317) 916-1300
(*Telephone No.*)

July 21, 2000
(*date*)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

FORM EXEMPT UNDER 44 U.S.C. 3512

FORM NLRB-508 (6-90)

UNITED STATES OF AMERICA 10368
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
25-CB-8220-2	07/29/99

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

CC - 5/5/00

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: United Food and Commercial Workers Union, Local 700

b. Union Representative to contact: Dave Kemp

c. Telephone No.: (317) 248-0391

d. Address *(street, city, state and ZIP code)*: 5638 Professional Circle, Indianapolis, IN 46241-5022

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* .1) (A) and (2) of the National Labor Relations Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

See Attached

3. Name of Employer: IBP, Inc.

4. Telephone No.: ( )

5. Location of plant involved *(street, city, state and ZIP code)*: 2125 South Co. Road 125W, Logansport, Indiana 46947

6. Employer representative to contact: Darrell Schmidt

7. Type of establishment *(factory, mine, wholesaler, etc.)*: Factory

8. Identify principal product or service: Processed food/meat

9. Number of workers employed: Approx. 2,000

10. Full name of party filing charge: Paul Lewis

11. Address of party filing charge *(street, city, state and ZIP code)*: 285 East 6th, Peru, Indiana 46970

12. Telephone No.: (765) 473-4931

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Kristian M. Dahl Staff Attorney
(signature of representative or person making charge) *(title or office, if any)*

Address National Right to Work Legal Def. Fdtn. (703) 321-8510 07/28/99
Suite 600, 8001 Braddock Rd., Springfield, VA 22160 *(Telephone No.)* *(date)*

WILLFULLY FALSE STATEMENTS ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

CHARGE AGAINST LABOR ORGANIZATION
§ 8(b)(1)(A) and (2)
INJUNCTIVE RELIEF UNDER §10(j) REQUESTED

1. Charging Party Paul Lewis, and similarly situated discriminatees, are employed in a bargaining unit represented by United Food and Commercial Workers Union, Local 700 (hereinafter "Union") and employed by I.B.P., Inc. (hereinafter "Employer") at their Logansport, Indiana meatpacking facility.

2. Charging Party has never joined the Union, has never signed a payroll deduction form, and has objected to all Union spending unrelated to collective bargaining, contract administration and grievance adjustment pursuant to C.W.A. v. Beck.

3. The Union has informed Charging Party and similarly situated discriminatees that the Union will only accept "core fee/ agency fee" payments by automatic payroll deduction. The Union coerced and threatened Charging Party and similarly situated discriminatees in an attempt to get them to authorize union payments by automatic payroll deduction.

4. Charging Party, and similarly situated discriminatees, refused to sign automatic payroll deduction forms and instead attempted to tender lawful payments to the union under the union security agreement first by direct delivery and then by mailing the money to the Union via certified mail.

5. The Union has refused to accept the certified letters from Charging Party and similarly situated discriminatees, in violation of the Union's duty of fair representation and of Charging Party's Section 7 right to refrain from collective activity.

6. The Union refuses to accept payment for agency fees by any method other than automatic payroll deduction, in violation of the Act.

7. Even though it is the Union which has refused to accept the payments by Charging Party for agency fee obligations, the Union has moved–pursuant to the union security agreement–for Charging Party's discharge on the grounds of failure to pay agency fees.

8. Charging Party was supplied an inadequate "financial disclosure" for the Union which purports to calculate the core agency fee for pursuant to C.W.A. v. Beck.

9. The Union's "financial disclosure" does not include disclosures for all of the Union's affiliates.

10. The Union's "financial disclosure" is inadequate for an objector--including Charging Party and similarly situated discriminatees--to gauge the propriety of the fee amount.

11. The Union is charging objecting non-members, including charging the Charging Party, and similarly situated discriminatees, for a host of non-chargeable activities, including

failure to prorate certain administrative and overhead costs.

12. The Union's "financial disclosure" and that for its affiliates (to the extent supplied) do not include an audited breakdown of Union and affiliate expenses.

13. Charging Party was never supplied with all his procedural rights to object to the Union's agency fee calculations.

14. The Union's financial disclosure includes categories charged for twice and/or duplicated.

15. The above acts and omissions violate Charging Party's, and similarly situated discriminatees', §7 right to refrain from collective activity and Sections 8(b)(1)(A) and (2) of the Act.

FORM EXEMPT UNDER 44 U.S.C. 3512
FORM NLRB-508
(6-90)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
1-CB-10464	5/27/05

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name United Food & Commercial Workers Union, Local 1459 UFCW

b. Union Representative to contact: Scott Macey, President

c. Telephone No.: (413) 732-6209

d. Address *(street, city, state and ZIP code)*: 33 Eastland St., Springfield, MA 01109

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) of the National Labor Relations Act. and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

1. Charging Party Claudia J. Roth is employed by Laidlaw Educational Services (the "employer") in a bargaining unit represented by UFCW Local 1459 (the "union"). Ms. Roth is not a member of the union.
2. The employer and the union have entered a collective bargaining agreement containing a union security clause.
3. The union has seized and is continuing to seize union fees from Ms. Roth's pay.
4. The union has not provided to Ms. Roth her rights as set forth in Communications Workers v. Beck, 487 U.S. 735 (1988).
5. The actions of the union as described in Paragraphs 3 and 4 restrain and coerce Ms. Roth and other bargaining unit employees in the exercise of their section 7 rights to refrain from collective activity and violate section 8(1)(A) of the Act, as well as the union's duty of fair representation and fair dealing. Ms. Roth files this charge on behalf of herself and all other similarly situated employees.

3. Name of Employer: Laidlaw Educational Services

4. Telephone No.: (508) 673-9260

5. Location of plant involved *(street, city, state and ZIP code)*: 2 Katlyn Drive, East Freetown, MA 02717

6. Employer representative to contact: Rita Haulman, Terminal Manager

7. Type of establishment *(factory, mine, wholesaler, etc.)*: Bus terminal

8. Identify principal product or service: School bus drivers

9. Number of workers employed: approximately 25

10. Full name of party filing charge: Claudia J. Roth

11. Address of party filing charge *(street, city, state and ZIP code)*: 25 Thomas Ave., #4, Buzzards Bay, MA 02532

12. Telephone No.: (508) 743-8334

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By John R. Martin — John R. Martin — Staff Attorney
(signature of representative or person making charge) *(title or office, if any)*

Address Nat'l Right to Work Legal Def. Found. Suite 600, 8001 Braddock Rd., Springfield, VA 22160 (703) 321-8510 *(Telephone No.)* 5/25/05 *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

FORM NLRB-508
(6-90)

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION

52722

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
2-CB-20511	11/16/05

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Local 1102, Retail Wholesale Department Store Union, UFCW (RWDSU/UFCW)

b. Union Representative to contact: Frank S. Bail

c. Telephone No.: 516-683-1102

d. Address *(street, city, state and ZIP code)*: 1587 Stewart Avenue, Westbury, NY 11590

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) of the National Labor Relations Act. and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

1) Charging Party and other similarly situated employees work in a unit of retail department store employees represented by the respondent union.

2) Respondent union has entered into a contract with the Charging Party's employer containing a compulsory unionism ("union security") clause. This contract went into effect in early November, 2005.

3) The union has now begun enforcing this "union security" clause, but has never informed the Charging Party or any other similarly situated discriminatee in the unit of his or her right to choose nonmembership under NLRB v. General Motors, 373 U.S. 734 (1963), or the right to pay only reduced "financial core fees" under CWA v. Beck, 487 U.S. 735 (1988). See California Saw and Knife Works, 320 NLRB 224 (1995); Paperworkers Local 1033 (Weyerhaeuser Paper Co.), 320 NLRB 349 (1995); L. D. Kichler Co., 335 NLRB 1427 (2001); and Rochester Manufacturing Co., 323 NLRB No. 36 (1997). To the contrary, the respondent union has distributed to the entire workforce a dual-purpose membership and dues check off authorization form, and union agents have illehally threatened the Charging Party and similarly situated discriminatees that every employee is required to join the union, pay full union dues, and sign these dual-purpose membership and dues check off forms or be fired.

4) All of the above acts and omissions, and related ones, threaten, restrain and coerce the Charging Party and the similarly situated discriminatees in the exercise of their §7 right to refrain from collective activity.

3. Name of Employer: Saks Fifth Avenue

4. Telephone No.: 212- 753-4000

5. Location of plant involved *(street, city, state and ZIP code)*: 611 Fifth Avenue, New York, N.Y. 10022

6. Employer representative to contact: Debra McRae

7. Type of establishment *(factory, mine, wholesaler, etc.)*: Retailer

8. Identify principal product or service: Retailer

9. Number of workers employed: Thousands; approx. 150 in unit

10. Full name of party filing charge: Robert Jones

11. Address of party filing charge *(street, city, state and ZIP code)*: 1415 Mott Avenue, Apt. 1C, Far Rockaway, N.Y. 11691

12. Telephone No.: 718-337-9004

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: William Messenger — Attorney
(signature of representative or person making charge) *(title or office, if any)*

Address: National Right to Work Legal Def. Fdtn.
Suite 600, 8001 Braddock Rd., Springfield, VA 22160

(703) 321-8510 *(Telephone No.)* — 11/14/05 *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

FORM NLRB-508 (6-90)

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE

Case	Date Filed
6-CB-11329	7-24-06

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: UFCW Local 38

b. Union Representative to contact: Rick B. Thomas

c. Telephone No.: (570) 742-9609

d. Address *(street, city, state and ZIP code)*: 143 North Street, Milton, PA 17847

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) of the National Labor Relations Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

See Attached.

3. Name of Employer: Delmonte Pet Products

4. Telephone No.: 570-784-8200

5. Location of plant involved *(street, city, state and ZIP code)*: 6670 Lowe Street, Bloomsberg, PA 17815

6. Employer representative to contact: Gregg Hansman

7. Type of establishment *(factory, mine, wholesaler, etc.)*: Industrial Cannery

8. Identify principal product or service: Pet Food

9. Number of workers employed: 400-500

10. Full name of party filing charge: See Attached.

11. Address of party filing charge *(street, city, state and ZIP code)*: See Attached

12. Telephone No.: See Attached

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: John C. Scully (signature of representative or person making charge) — Attorney (title or office, if any)

Address: National Right to Work Legal Def. Fdtn. Suite 600, 8001 Braddock Rd., Springfield, VA 22160

(703) 321-8510 (Telephone No.)

July 21, 2006 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

1. Charging Parties Robert Brobst, Kendall Adams, Connie Brobst, Gary Gardner, Andy Sickora, Herman Spangler are employed by Delmonte Pet Products in a bargaining unit represented by Respondent UFCW Local 38.

2. Respondent UFCW Local 38 has a collective bargaining agreement with Delmonte Pet Products that has a compulsory unionism clause that requires all bargaining unit members to join or pay a fee to Respondent as a condition of employment.

3. Charging Parties are not members of Respondent Union and have notified the union that they object to paying for non-collective bargaining activities.

4. In the Spring of 2006, Respondent Union raised the dues of members by .23 cents and of non-member Beck objectors by .93 cents. The union provided no explanation as to why the non-members were paying a disproportionately higher amount of fees than members were paying dues. Charging Parties wrote to Respondent Union requesting an explanation and the union failed to provide any explanation or justification.

5. On or about May, 2006, Respondent Union sent Charging Parties the Respondent's breakdown of chargeable and non-chargeable expenses.

6. The breakdown did not meet the union's obligations under CWA v. Beck and its progeny including but not limited to the following reasons:

   a. the breakdown of expenses was limited to the International and contained no breakdown of Local 38;
   b. the breakdown unlawfully includes organizing expenses and does not limit those expenses to organizing units that inure to the benefit of charging parties' bargaining unit;
   c. the breakdown unlawfully includes charges for health care, finance and professional employee division that does not inure to the benefit of the bargaining unit;
   d. the breakdown includes expenses for "charted bodies" including organizing and strike funds that does not inure to the benefit of the local bargaining unit.

7. The actions of the Respondent as described in the above paragraphs 4 and 6 restrain and coerce the Charging Parties in the exercise of Charging Parties' Section 7 rights to refrain from collective activity and violates Section 8(b)(1)(A) of the Act and the unions' duty of fair representation and fair dealing.

FORM NLRB-508 (6-90)

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA 4046

NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case 9-CB-9760	Date Filed April 10, 1998

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Local No. 1099, United Food and Commerical Workers

b. Union Representative to contact: Lennie Wyatt

c. Telephone No.: 513-539-9961

d. Address *(street, city, state and ZIP code)*: 913 Lebannon Street, Monroe, OH 45050

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

1. Charging Party is employed by Meijers, Inc. in a bargaining unit represented by UFCW Local 1099.

2. The employer and the union have entered into a collective bargaining agreement requiring employees to be "members" of the union, and to maintain their membership in good standing as a condition of employment. The union security clause requiring membership in good standing is facially unlawful, misleading to all employees, and unenforceable. Buzenius v. NLRB, 124 F.3d 788 (6th Cir. 1997); Bloom v. NLRB, 30 F.3d 1001 (8th Cir. 1994). As such, it should be ordered expunged from the contract.

3. Moreover, at no time has the union or the employer adequately informed the Charging Party (and other similarly situated employees) of their right to become or remain nonmembers of the union, and their parallel right to pay only reduced financial core fees, as required by California Saw and Knife Works, 320 NLRB 224, n.57 (1995) and CWA v. Beck, 487 U.S. 735 (1988). To the contrary, the union and the company have maintained and actively enforced their "membership in good standing" requirement against the Charging Party and the entire bargaining unit. Especially in the absence of the requisite notice to all employees under California Saw and Knife Works, the existence, mere maintenance and enforcement of this clause discriminates with regard to hire and tenure of employment, unlawfully encourages union membership among all employees, and restrains and coerces all employees in the exercise of their Section 7 rights.

4. From Nov., 1997 through Jan., 1998, the union sent Charging Party a series of letters threatening his employment unless he became a member of the union and/or paid full membership dues and initiation fees. These letters failed to mention even the possibility that employees could satisfy any union security obligations by remaining nonmembers and paying only reduced financial core fees under Beck. The union also ignored his specific request for information about his rights as a nonmember.

5. On or about January 23, 1998, in violation of § 8(b)(2), the union attempted to cause the employer to discharge the Charging Party for unlawful reasons. The unlawful reasons included the Charging Party's refusal to pay full dues even though he was not a union member and was a Beck objector, and the union's failure to provide any Beck notice.

6. All of these actions coerce, restrain and discriminate against the Charging Party and all similarly situated discriminatees in the exercise of their Section 7 rights to refrain from collective activity, in violation of § § 8(b)(1)(A) and (2).

3. Name of Employer: Meijer Inc.

4. Telephone No.: 937-426-7400

5. Location of plant involved *(street, city, state and ZIP code)*: 3822 Colonel Glenn Highway, Fairborn, OH 45324

6. Employer representative to contact: Bruce Krause

7. Type of establishment *(factory, mine, wholesaler, etc.)*: Retail Store

8. Identify principal product or service: Retailer

9. Number of workers employed: Hundreds

10. Full name of party filing charge: Matthew T. Baldwin

11. Address of party filing charge *(street, city, state and ZIP code)*: P.O. Box 601 CedArville, OH 45314

12. Telephone No.: 937-766-9404

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Glenn M. Taubman Attorney
(signature of representative or person making charge) *(title or office, if any)*

Address National Right to Work Legal Def. Fdtn. (703) 321-8510 04/07/98
Suite 600, 8001 Braddock Rd., Springfield, VA 22160 *(Telephone No.)* *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

FORM NLRB-508
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATIONS OR ITS AGENTS

8292-1

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case 9-CB-12507	Date Filed APRIL 8, 2011

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to contact	
United Food and Commercial Workers, Local 227	Joel Neil	
c. Address (Street, city, state, and ZIP code)	d. Tel. No.	e. Cell No.
7902 Old Miners Lane Louisville KY 40219-	(270)315-7093	( ) -
	f. Fax No. ( ) -	g. e-Mail

h. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* 1(A) ____ ____ ____ ____ ____ ____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Since about February 28, 2011, the above-named Labor Organization failed to properly represent Toni Owens by insisting that she must join the Union or be terminated, failing to inform her of her rights and failing to inform her of her Beck rights.

3. Name of Employer	4a. Tel. No.	b. Cell No.
Kroger Company	(502)524-8542	( ) -
	c. Fax No. ( ) -	d. e-Mail

5. Location of plant involved *(street, city, state and ZIP code)*	6. Employer representative to contact
9440 Brownsburg Road Louisville KY 40212-	Maria Williams

7. Type of establishment *(factory, mine, wholesaler, etc.)*	8. Identify principal product or service	9. Number of workers employed
retail store	retail	

10. Full name of party filing charge	11a. Tel. No.	b. Cell No.
Toni Owens	(816)872-9970	( ) -
	c. Fax No. ( ) -	d. e-Mail

11. Address of party filing charge *(street, city, state and ZIP code.)*
2725 West Jefferson Street
Louisville KY 40212-

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Toni Owens — An Individual
(signature of representative or person making charge) — *(Print/type name and title or office, if any)*

Address Toni Owens, 2725 West Jefferson Street, Louisville KY 40212- (date) 4/6/2011

Tel. No.	(816)872-9970
Cell No.	( ) -
Fax No.	( ) -
e-Mail	stayup1976@yahoo.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

09-2011-0781

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

FORM NLRB-508 (6-90)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

83085

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case	Date Filed
14-CB-10640	2/9/11

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: United Food & Commercial Workers Local 88

b. Union Representative to contact: Mel Meyer, Secretary-Treasurer

c. Telephone No.: 314-664-6328

d. Address *(street, city, state and ZIP code)*: 5730 Elizabeth Avenue, St. Louis, MO 63110

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) of the National Labor Relations Act. and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Injunction under Section 10(j) requested

1) Charging Party and hundreds of similarly situated employees work for Kerry Ingredients in Missouri. The union just secured a first contract after a controversial and unpopular ratification process.

2) The union is now enforcing a forced unionism ("union security") clause against the Charging Party and all other similarly situated employees. The union and its officers and agents are enforcing the clause by threatening employees with discharge unless they sign the union membership and dues deduction authorization cards.

3) At no time has the union provided the Charging Party and other similarly situated employees with notice of their true legal rights to become or remain nonmembers, and their rights to object to paying full dues, under cases such as CWA v. Beck, Paperworkers Union (Weyerhaeuser Paper Co.), 320 NLRB 349 (1995) and L. D. Kichler Co., 335 NLRB 1427 (2001). The union has not given employees any information about the reduced financial core fees that they have the opportunity to pay as nonmembers objectors under Teamsters Local 579 (Chambers & Owen), 350 NLRB No. 87 (2007).

4) In addition, the union originally stated that initiation fees would be waived for all employees. Now, the union is using that promise as a bludgeon, telling employees that the initiation fees will only be waived for employees who sign a union card and join the union within the next few weeks. NLRB v. Savair Mfg., 414 U.S. 270 (1973).

5) All of the above acts and omissions, and related ones, threaten, restrain and coerce the Charging Party and the similarly situated discriminatees in the exercise of their §7 rights to refrain from collective activity and violate the duty of fair representation.

Name of Employer: Kerry Ingredients, Inc.

4. Telephone No.: 314-505-4000

5. Location of plant involved *(street, city, state and ZIP code)*: 8021 New Hampshire, St. Louis, MO 63123

6. Employer representative to contact: Chris Landry

7. Type of establishment *(factory, mine, wholesaler, etc.)*: factory

8. Identify principal product or service: factory

9. Number of workers employed: approx. 300

10. Full name of party filing charge: John Hensler Jr.

11. Address of party filing charge *(street, city, state and ZIP code)*: 344 Bunker Hill Rd., Belleville, IL 62221

12. Telephone No.: 618-977-9603

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: [signature] Glenn Taubman — Attorney (gmt@nrtw.org)
(signature of representative or person making charge) *(title or office, if any)*

Address: National Right to Work Legal Def. Fdtn., Suite 600, 8001 Braddock Rd., Springfield, VA 22160

(703) 321-8510 *(Telephone No.)* — 2/8/11 *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

FORM NLRB-508 (6-90)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS 23082

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
19--CB--8697	6/29/2001

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: United Food and Commercial Workers Local 367

b. Union Representative to contact: Teresa Iverson

c. Telephone No.: 253-589-0367

d. Address *(street, city, state and ZIP code)*: 9500 Front Street South, # 100, Tacoma, WA. 98499

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1) (A) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

1). Charging Party is employed by Fuller Market, Inc., in a bargaining unit represented by respondent UFCW Local 367. The contract between Local 367 and the Charging Party's employer contains a union security clause. Charging Party was formerly a member of the union.

2) On or about April 1, 2001, Charging Party resigned from membership in the union and notified it of her objections to paying full union dues, under CWA v. Beck, 487 U. S. 735 (1988).

3) The union has ignored this resignation and Beck objection, and continues to treat the Charging Party as a full member of the union. The union has continued demanding, upon pain of discharge, that the Charging Party pay full union dues, and the union has threatened the Charging Party with having to pay "reinstatement fees" unless she pays the full union dues. The union has failed to provide the Charging Party with any reduced Beck fee calculation for itself and its affiliated unions, and the union has failed to provide the Charging Party with any financial disclosure of its expenses, or those of its politically active affiliated unions.

4) These and related actions restrain, coerce, threaten and discriminate against the Charging Party and all similarly situated employees in the exercise of their § 7 rights to refrain from collective activity.

3. Name of Employer: Fuller Market, Inc.

4. Telephone No.: 360-330-0310

5. Location of plant involved *(street, city, state and ZIP code)*: 1227 Harrison Ave., Centralia, WA. 98513

6. Employer representative to contact: Liz Fuller

7. Type of establishment *(factory, mine, wholesaler, etc.)*: Supermarket

8. Identify principal product or service: Groceries

9. Number of workers employed: Hundreds

10. Full name of party filing charge: Bonnie L. Soteropolis

11. Address of party filing charge *(street, city, state and ZIP code)*: 3300 21st Ave. S.W., Apt. A-9, Olympia, WA. 98512

12. Telephone No.: 360-705-2252

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] Glenn M. Taubman Attorney
(signature of representative or person making charge) *(title or office, if any)*

Address National Right to Work Legal Def. Fdtn., Suite 600, 8001 Braddock Rd., Springfield, VA 22160 (703) 321-8510 *(Telephone No.)* 06/26/01 *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

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FORM NLRB-508 (6-90)

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA 5662

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case 21-CB-12488 (c-21-CA-32643)	Date Filed 3-26-98

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: United Food and Commercial Workers Union, Local 324

b. Union Representative to contact:

c. Telephone No.: 714-995-4601

d. Address *(street, city, state and ZIP code)*: 8530 Stanton Avenue, Box 5004, Buena Park, CA 90622

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

See attached sheet.
Injunctive Relief Sought Under Section 10(J).

3. Name of Employer: Thrifty-Payless, Inc.	4. Telephone No.: 714-363-0128
5. Location of plant involved *(street, city, state and ZIP code)*: 30261 Golden Lantern, Laguna Niguel, CA 92677	6. Employer representative to contact: Timothy Wilkinson
7. Type of establishment *(factory, mine, wholesaler, etc.)*: Retail	8. Identify principal product or service: Retail
	9. Number of workers employed: Thousands
10. Full name of party filing charge: Wayne J. Vega	
11. Address of party filing charge *(street, city, state and ZIP code)*: 33215 Blue Fin Drive, Dana Point, CA 92629-1416	12. Telephone No.: 714-240-1441

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Glenn M. Taubman *(signature of representative or person making charge)* Glenn M. Taubman Attorney *(title or office, if any)*

Address National Right to Work Legal Def. Fdtn. Suite 600, 8001 Braddock Rd., Springfield, VA 22160 (703) 321-8510 *(Telephone No.)* 03/25/98 *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNFAIR LABOR PRACTICE CHARGE AGAINST UNION-§ 8(b)(1)(A) and (2)
INJUNCTION UNDER § 10(J) REQUESTED

1. Charging Party is employed by Thrifty-Payless Inc. in a bargaining unit represented by UFCW Local 324.

2. The employer and the union have entered into a collective bargaining agreement requiring employees to be members of the union, and to maintain their membership in good standing as a condition of employment. This clause is misleading to all employees, overbroad, facially invalid, and should be ordered expunged. Buzenius v. NLRB, 124 F.3d 788 (6th Cir. 1997); Bloom v. NLRB, 30 F.3d 1001 (8th Cir. 1994).

3. At no time has the union or the employer informed employees of their right to become or remain nonmembers of the union, and their parallel right to pay only reduced financial core fees, as required by California Saw and Knife Works, 320 NLRB 224, n.57 and CWA v. Beck, 487 U.S. 735 (1988). To the contrary, the union and the company have maintained and actively enforced their "membership" requirement against the Charging Party and the entire bargaining unit. Especially in the absence of the requisite notice to all employees under California Saw and Knife Works, the existence, mere maintenance and enforcement of this clause discriminates with regard to hire and tenure of employment, unlawfully encourages union membership among all employees, and restrains and coerces all employees in the exercise of their Section 7 rights.

4. In October and November, 1997, the union informed the Charging Party that he was required to become a member of the union as a condition of employment. The union demanded that the employer discharge the Charging Party unless he showed proof of membership. This demand is unlawful and coercive. At no time has the union provided the Charging Party with any information about his right to remain a nonmember, and his parallel right to pay only reduced financial core fees under CWA v. Beck, 487 U.S. 735 (1988). The union's action blatantly violates the fiduciary duty of fair representation and fair dealing owed to the Charging Party under cases such as Philadelphia Sheraton, 136 NLRB 888 (1962) and Production Workers Union, 322 NLRB No. 9 (1996).

5. On March 19, 1998, in furtherance of the union's unlawful demand, the employer terminated the Charging Party for his failure to "join" the union.

6. All of these actions discriminate against, threaten, restrain and coerce the Charging Party and all similarly situated employees in the bargaining unit in the exercise of their Section 7 rights to refrain from collective activity; and cause or attempts to cause an employer to discriminate against the Charging Party and other employees based upon unlawful considerations. Relief under § 10(j) is sought.